

AMENDED IN SENATE MAY 11, 2010

AMENDED IN SENATE MARCH 23, 2010

SENATE BILL

No. 1362

Introduced by Senator Simitian
(Coauthors: Senators Ashburn and Huff)

February 19, 2010

An act to amend ~~Section 21455.5~~ *Sections 21455.5 and 40518* of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 1362, as amended, Simitian. Vehicles: automated traffic enforcement systems.

Existing

(1) Existing law authorizes the limit line, intersection, or other places where a driver is required to stop to be equipped with an automated enforcement system, as defined, if the system meets certain requirements. Existing law authorizes a governmental agency to contract out the operation of the system under certain circumstances, except for specified activities, that include, among other things, establishing guidelines for selection of location. A violation of the Vehicle Code is a crime.

This bill would require that those requirements include identifying the system by signs posted at each intersection where a system is operating and that the guidelines be based solely on safety and be made available to the public, including posting the guidelines on the governmental agency's Internet Web site, if applicable. The bill would require, prior to installing an automated traffic enforcement system, the governmental agency, for a minimum period of 6 months, to collect traffic collision data for the type of violation to be photographed and

would also require at each location where a system is to be installed that the traffic collision data demonstrate a significant need for the infraction upon which the citations will be based. The bill would authorize a governmental agency to use an automated traffic enforcement system only if the data indicate that there is a significant number of collisions that occur as a result of the type of violation the governmental agency seeks to use the automated system to enforce.

The bill would prohibit an employee, agent, or representative of the governmental agency or of a law enforcement agency from contacting the registered owner of a vehicle prior to issuing a notice to appear either directly or indirectly in an effort to determine the identity of an alleged automated traffic enforcement system violator without making the registered owner aware, in a clear and prominent fashion, that the registered owner is not required to provide that information and that failure to provide that information shall not result in any adverse action.

The bill would make any citation issued by a governmental agency null and void if the governmental agency violates or engages in a contract that violates specified activities. The bill would also require the dismissal of any citation issued by a law enforcement agency if the court finds that the governmental agency has failed to operate the automated traffic enforcement system in compliance with specified provisions of law applicable to automated traffic enforcement. If a court finds that the governmental agency has failed to operate the system in compliance with applicable provisions of law, a law enforcement agency would be prohibited from issuing any citations until the governmental agency demonstrates to the satisfaction of the court that it is in full compliance with all of the requirements applicable to automated traffic enforcement.

The bill would prohibit a governmental agency that operates an automated traffic enforcement system from considering revenue generation, beyond recovering its actual costs of operating the system, as a factor when considering whether or not to operate a system within its local jurisdiction. The bill would require the manufacturer or supplier that operates an automated traffic enforcement system, in cooperation with the governmental agency, to submit an annual report to the Judicial Council that includes specified information.

(2) Existing law provides special written, mailed notice to appear procedures in connection with certain alleged violations recorded by an automated traffic enforcement system and provides that whenever a written notice to appear has been issued by a peace officer or by a

qualified employee of a law enforcement agency on a form approved by the Judicial Council for an alleged traffic violation recorded by an automated traffic enforcement system, and delivered by mail within 15 days of the alleged violation to the current address of the registered owner of the vehicle on file with the Department of Motor Vehicles, with a certificate of mailing obtained as evidence of service, an exact and legible duplicate copy of the notice when filed with the magistrate constitutes a complaint to which the defendant may enter a plea.

This bill would delete “qualified employee of a law enforcement agency” from these provisions and would expand the information that must be included on a notice to appear. The bill would authorize the mailing of a specified courtesy notice or any other notice other than a notice to appear by the issuing agency to the registered owner or the alleged violator prior to issuing a notice to appear that is required to contain specified information. The bill would prohibit a manufacturer or supplier of an automated traffic enforcement system or the governmental agency operating the system from altering the notice to appear or any other form approved by the Judicial Council. If a form is found to have been altered, the bill would require that the citation based on the altered form be dismissed.

(3) Because it is unlawful and constitutes an infraction for any person to violate, or fail to comply with any provision of the Vehicle Code, this bill would impose a state-mandated local program.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 21455.5 of the Vehicle Code is amended
- 2 to read:
- 3 21455.5. (a) The limit line, the intersection, or a place
- 4 designated in Section 21455, where a driver is required to stop,
- 5 may be equipped with an automated traffic enforcement system if

1 the governmental agency utilizing the system meets all of the
2 following requirements:

3 ~~(1) Identifies the system by signs that clearly indicate the~~
4 ~~system's presence and are visible to traffic approaching from all~~
5 ~~directions, and posts signs at all major entrances to the city,~~
6 ~~including, at a minimum, freeways, bridges, and state highway~~
7 ~~routes.~~

8 *(1) Identifies the system by signs posted at each intersection*
9 *where a system is operating that clearly indicate the system's*
10 *presence and are visible to traffic approaching from all directions.*

11 (2) If it locates the system at an intersection, and ensures that
12 the system meets the criteria specified in Section 21455.7.

13 (b) Prior to issuing citations under this section, a local
14 jurisdiction utilizing an automated traffic enforcement system shall
15 commence a program to issue only warning notices for 30 days.
16 The local jurisdiction shall also make a public announcement of
17 the automated traffic enforcement system at least 30 days prior to
18 the commencement of the enforcement program.

19 (c) Only a governmental agency, in cooperation with a law
20 enforcement agency, may operate an automated traffic enforcement
21 system. ~~As used in this subdivision, "operate" includes all of the~~
22 ~~following activities:~~ *system. A governmental agency that operates*
23 *an automated traffic enforcement system shall do all of the*
24 *following:*

25 ~~(1) Developing~~ *Develop* uniform guidelines for screening and
26 issuing violations and for the processing and storage of confidential
27 information, and ~~establishing~~ *establish* procedures to ensure
28 compliance with those guidelines.

29 ~~(2) Performing~~ *Perform* administrative functions and day-to-day
30 functions, including, but not limited to, all of the following:

31 (A) Establishing guidelines for selection of location based *solely*
32 on safety. The guidelines shall be made available to the public,
33 including posting the guidelines on the governmental agency's
34 Internet Web site, if applicable. *Prior to installing an automated*
35 *traffic enforcement system, the governmental agency shall, for a*
36 *minimum period of six months, collect traffic collision data for the*
37 *type of violation to be photographed. At each location where a*
38 *system is to be installed, the traffic collision data shall demonstrate*
39 *a significant need for the infraction upon which the citation will*
40 *be based. A governmental agency may use an automated traffic*

1 *enforcement system to provide evidence of a violation involving a*
2 *driver turning right, turning left, or proceeding straight through*
3 *an intersection during a red light only if the data indicate that*
4 *there is a significant number of collisions that occur as a result*
5 *of the type of violation the governmental agency seeks to use the*
6 *automated system to enforce.*

7 (B) Ensuring that the equipment is regularly inspected.

8 (C) Certifying that the equipment is properly installed and
9 calibrated, and is operating properly.

10 (D) Regularly inspecting and maintaining warning signs placed
11 under paragraph (1) of subdivision (a).

12 (E) Overseeing the establishment or change of signal phases
13 and the timing thereof.

14 (F) Maintaining controls necessary to ~~assure~~ *ensure* that only
15 those citations that have been reviewed and approved by law
16 enforcement are delivered to *actual* violators. *An employee, agent,*
17 *or representative of the governmental agency or of the law*
18 *enforcement agency shall not contact the registered owner of a*
19 *vehicle prior to issuing a notice to appear either directly or*
20 *indirectly in an effort to determine the identity of an alleged*
21 *automated traffic enforcement system violator without making the*
22 *registered owner aware, in a clear and prominent fashion, that*
23 *the registered owner is not required to provide that information*
24 *and that failure to provide that information shall not result in any*
25 *adverse action.*

26 (d) (1) The activities listed in subdivision (c) that relate to the
27 operation of the system may be contracted out by the governmental
28 agency, if it maintains overall control and supervision of the
29 system. However, the activities listed in paragraph (1) of, and
30 subparagraphs (A), (D), (E), and (F) of paragraph (2) of,
31 subdivision (c) may not be contracted out to the manufacturer or
32 supplier of the automated traffic enforcement system.

33 (2) Any citation issued by a governmental agency is null and
34 void if it violates or engages in a contract that violates any of the
35 activities described in paragraph (1) of, or subparagraph (A), (D),
36 (E), or (F) of paragraph (2) of, subdivision (c).

37 (3) *Any citation issued by a law enforcement agency shall be*
38 *dismissed if the court finds that the governmental agency has failed*
39 *to operate the automated traffic enforcement system in compliance*

1 *with the requirements of this section or any other law applicable*
2 *to automated traffic enforcement.*

3 (4) *If a court finds that the governmental agency has failed to*
4 *operate the system in compliance with this section or any other*
5 *law applicable to automated traffic enforcement, a law enforcement*
6 *agency shall not issue any citations until the governmental agency*
7 *demonstrates to the satisfaction of the court that it is in full*
8 *compliance with the requirements of this section or any other law*
9 *applicable to automated traffic enforcement.*

10 (e) (1) Notwithstanding Section 6253 of the Government Code,
11 or any other provision of law, photographic records made by an
12 automated traffic enforcement system shall be confidential, and
13 shall be made available only to governmental agencies and law
14 enforcement agencies and only for the purposes of this article.

15 (2) Confidential information obtained from the Department of
16 Motor Vehicles for the administration or enforcement of this article
17 shall be held confidential, and may not be used for any other
18 purpose.

19 (3) Except for court records described in Section 68152 of the
20 Government Code, the confidential records and information
21 described in paragraphs (1) and (2) may be retained for up to six
22 months from the date the information was first obtained, or until
23 final disposition of the citation, whichever date is later, after which
24 time the information shall be destroyed in a manner that will
25 preserve the confidentiality of any person included in the record
26 or information.

27 (f) Notwithstanding subdivision (d), the registered owner or any
28 individual identified by the registered owner as the driver of the
29 vehicle at the time of the alleged violation shall be permitted to
30 review the photographic evidence of the alleged violation.

31 (g) (1) A contract between a governmental agency and a
32 manufacturer or supplier of automated traffic enforcement
33 equipment may not include provision for the payment or
34 compensation to the manufacturer or supplier based on the number
35 of citations generated, or as a percentage of the revenue generated,
36 as a result of the use of the equipment authorized under this section.

37 (2) Paragraph (1) does not apply to a contract that was entered
38 into by a governmental agency and a manufacturer or supplier of
39 automated traffic enforcement equipment before January 1, 2004,

1 unless that contract is renewed, extended, or amended on or after
2 January 1, 2004.

3 *(3) A governmental agency that operates an automated traffic*
4 *enforcement system shall not consider revenue generation, beyond*
5 *recovering its actual costs of operating the system, as a factor*
6 *when considering whether or not to operate a system within its*
7 *local jurisdiction.*

8 *(h) A manufacturer or supplier that operates an automated*
9 *traffic enforcement system pursuant to this section shall, in*
10 *cooperation with the governmental agency, submit an annual*
11 *report to the Judicial Council that includes, but is not limited to,*
12 *all of the following information:*

13 *(1) The number of alleged violations captured by the systems*
14 *they operate.*

15 *(2) The number of citations issued by a law enforcement agency*
16 *based on information collected from the automated traffic*
17 *enforcement system.*

18 *(3) The number of citations issued for each type of violation.*

19 *(4) The number and percentage of citations that are contested.*

20 *(5) The number and percentage of citations that are dismissed.*

21 *(6) The number of traffic collisions at each intersection that*
22 *have occurred prior to, and after the installation of, the automated*
23 *traffic enforcement system.*

24 *SEC. 2. Section 40518 of the Vehicle Code is amended to read:*

25 *40518. (a) Whenever a written notice to appear has been issued*
26 *by a peace officer or by a qualified employee of a law enforcement*
27 *agency on a form approved by the Judicial Council for an alleged*
28 *violation of Section 22451, or, based on an alleged violation of*
29 *Section 21453, 21455, or 22101 recorded by an automated traffic*
30 *enforcement system pursuant to Section 21455.5 or 22451, and*
31 *delivered by mail within 15 days of the alleged violation to the*
32 *current address of the registered owner of the vehicle on file with*
33 *the department, with a certificate of mailing obtained as evidence*
34 *of service, an exact and legible duplicate copy of the notice when*
35 *filed with the magistrate shall constitute a complaint to which the*
36 *defendant may enter a plea. Preparation and delivery of a notice*
37 *to appear pursuant to this section is not an arrest.*

38 *(b) (1) A notice to appear shall contain the name and address*
39 *of the person, the license plate number of the person's vehicle, the*
40 *violation charged, including a description of the offense, and the*

1 time and place when, and where, the person may appear in court
2 or before a person authorized to receive a deposit of bail. The time
3 specified shall be at least 10 days after the notice to appear is
4 delivered.

5 (2) *A notice to appear shall also contain all of the following*
6 *information:*

7 (A) *The methods by which the registered owner of the vehicle*
8 *or the alleged violator may view and discuss with the issuing*
9 *agency, both by telephone and in person, the evidence used to*
10 *substantiate the violation.*

11 (B) *The contact information of the issuing agency.*

12 (C) *Information provided by the manufacturer or supplier of*
13 *the automated traffic enforcement system or the governmental*
14 *agency with which it contracts that clearly and conspicuously*
15 *identifies the manufacturer or supplier of the system.*

16 (c) *This section and Section 40520 do not preclude the issuing*
17 *agency from mailing a courtesy notice or any other notice other*
18 *than a notice to appear to the registered owner of the vehicle or*
19 *the alleged violator prior to issuing a notice to appear. The*
20 *courtesy notice or other notice other than a notice to appear shall*
21 *be on a form approved by the Judicial Council and shall contain*
22 *all of the following information:*

23 (1) *The methods by which the registered owner of the vehicle*
24 *or the alleged violator may view and discuss with the issuing*
25 *agency, both by telephone and in person, the evidence used to*
26 *substantiate the violation.*

27 (2) *The contact information of the issuing agency.*

28 (3) *Information provided by the manufacturer or supplier of the*
29 *automated traffic enforcement system or the governmental agency*
30 *with which it contracts that clearly and conspicuously identifies*
31 *the manufacturer or supplier of the system.*

32 (d) *A manufacturer or supplier of an automated traffic*
33 *enforcement system or the governmental agency operating the*
34 *system shall not alter the notice to appear or any other form*
35 *approved by the Judicial Council. If a form is found to have been*
36 *altered, the citation based on the altered form shall be dismissed.*

37 SEC. 3. *No reimbursement is required by this act pursuant to*
38 *Section 6 of Article XIII B of the California Constitution because*
39 *the only costs that may be incurred by a local agency or school*
40 *district will be incurred because this act creates a new crime or*

1 *infraction, eliminates a crime or infraction, or changes the penalty*
2 *for a crime or infraction, within the meaning of Section 17556 of*
3 *the Government Code, or changes the definition of a crime within*
4 *the meaning of Section 6 of Article XIII B of the California*
5 *Constitution.*

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